

**THE INSTITUTE FOR JUSTICE**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

**DONALD LEO MELLEIN,**

Plaintiff,

v.

**UNITED STATES OF AMERICA,**

Defendant.

Case No. 2:23-cv-07970-RGK-MAR

**DECLARATION OF JOSEPH  
GAY IN SUPPORT OF  
PLAINTIFF'S *EX PARTE*  
APPLICATION FOR ORDER  
REQUIRING DEFENDANT TO  
FINISH RESPONDING TO  
DISCOVERY**

*(Filed concurrently with Plaintiff's Ex  
Parte Application and Proposed  
Order)*

**DISCOVERY MATTER**

Judge: Hon. Margo A. Rocconi  
Discovery Cutoff: Sept. 4, 2024  
Pretrial Conference: Nov. 18, 2024  
Trial Date: Dec. 3, 2024

1 I, Joseph Gay, declare:

2 1. I am an active member of the State Bar of New York and the District  
3 of Columbia Bar, and I am an attorney at the Institute for Justice. I represent  
4 Plaintiff in this action and submit this declaration in support of Plaintiff's *Ex Parte*  
5 Application for Order Requiring Defendant to Finish Responding to Discovery.

6 2. Attached as Exhibit A is the Scheduling Order for this case, which  
7 was filed in this action at Docket Entry 83 (Apr. 8, 2024).

8 3. Attached as Exhibit B is the Order for Court Trial for this case, which  
9 was filed in this action at Docket Entry 84 (Apr. 8, 2024).

10 4. The parties have discussed the current dispute about the FBI's  
11 obligations to complete its document productions in a timely manner on several  
12 occasions, including by phone on May 20 and June 21, 2024, in person on July 31,  
13 and by phone on August 14, 2024.

14 5. On August 14, 2024, at about 5:00pm PT, I orally advised counsel for  
15 Defendant (Assistant U.S. Attorneys Jasmin Yang and Yujin Chun) about  
16 Plaintiff's intention to apply for *ex parte* relief and of the date and substance of the  
17 Application that this Declaration supports. Defendant's counsel stated that  
18 Defendant opposes the application. During that discussion, counsel for the  
19 government relayed information they had received from the FBI that the FBI might  
20 be able to finish producing the documents that it agreed to produce in response to  
21 Plaintiff's April 10, 2024 discovery requests by August 23, 2024. The FBI,  
22 however, has not ***started*** looking at documents that are responsive to either  
23 Plaintiff's June 28, 2024, discovery requests or any of the discovery ordered by the  
24 Court in its July 31, 2024 Order.

25 6. On August 6, 2024, the parties requested a telephonic conference with  
26 the Court to discuss whether the government must provide a reasonable time by  
27 which it will complete its productions and whether that time must be before the  
28 discovery cut-off date on September 4, 2024. That same day, the Court granted

1 leave to file a motion to compel without a telephonic conference. Attached as  
2 Exhibit C is a copy of the email chain with the parties' request for a telephonic  
3 conference and the Court's leave to file a motion to compel.

4 7. Attached as Exhibit D is a copy of the Form-597 "Receipt for  
5 Property" documenting the items returned to Plaintiff Don Mellein's former  
6 attorney on June 14, 2021.

7 8. Attached as Exhibit E is a copy of the Form FD-302, describing the  
8 government's discovery of some of Plaintiff Don Mellein's coins on about June 14,  
9 2021.

10 9. Attached as Exhibit F is a copy of the Declaration of Special Agent  
11 Lynne Zellhart, which was filed as docket entry 30-1 in the earlier lawsuit, *Mellein*  
12 *v. United States*, No. 2:21-cv-6588 (C.D. Cal. Dec. 2, 2021), which I obtained from  
13 the public docket in that case.

14 10. Attached as Exhibit G is a copy of my email to Defendant's counsel  
15 dated April 10, 2024, serving Plaintiff's first set of discovery requests. These  
16 requests are the bulk of Plaintiff's discovery requests in this matter. After the  
17 government's May 10, 2024, responses and objections, on May 16, 2024, I  
18 requested a Local Rule 37-1 conference regarding the government's objection to  
19 providing discovery about other boxes with missing or misplaced property.

20 11. Attached as Exhibit H is a copy of an email chain between the parties  
21 regarding Defendant's responses/objections to Plaintiff's discovery requests and  
22 the timing of Defendant's productions. I did not receive a response to my final  
23 email in this chain.

24 12. On May 20, 2024, at 1:30pm PT, the parties held a meet-and-confer  
25 by telephone regarding discovery. Robert Frommer and I attended for Plaintiff.  
26 Jasmin Yang attended for Defendant, and Yujin Chun may have been on the call  
27 for Defendant, as well. During that call, Plaintiff's counsel again emphasized the  
28 need for the FBI to promptly produce its documents. Defendant's counsel

1 responded that non-email documents would be produced by the end of the week  
2 and that they hoped to know more about emails the following week.

3 13. Attached as Exhibit I is a copy of an email chain between the parties  
4 regarding Defendant's document productions. I did not receive a response to my  
5 email in the chain dated June 7, 2024, addressing the government's production  
6 schedule and requesting a Local Rule 37-1 conference. I also did not receive a  
7 response to my email dated June 14, 2024, following up on my earlier email and  
8 again requesting a Local Rule 37-1 conference.

9 14. On June 21, 2024, at about 11:30am PT, counsel for the parties joined  
10 a conference call to meet and confer about discovery issues. Robert Frommer,  
11 Robert Johnson, and I attended for Plaintiff. Jasmin Yang and Yujin Chun attended  
12 for the government. During that call, Plaintiff's counsel again asked about the  
13 status of the FBI's document productions. Counsel for the government explained  
14 that they did not have access to the documents the FBI was reviewing and that it is  
15 "hard" to get agencies to do things on time. They also said that they hoped to have  
16 an estimate for the FBI's production the following Tuesday.

17 15. After that call, on June 21, 2024, I again emailed the government (as  
18 part of the email chain attached as Exhibit I) about the FBI's productions and asked  
19 the government to provide a statement of its position to include in a request for a  
20 prefiling teleconference under Magistrate Judge Rocconi's procedures. I also did  
21 not receive a response to that email.

22 16. On June 27, 2024, the government responded within several minutes  
23 to my June 27, 2024 email about presenting the dispute to the Court for a prefiling  
24 teleconference (as reflected in Exhibit I). Based on that response, I understood that  
25 the FBI would begin producing responsive email communications soon, that there  
26 would be no difficulty completing those productions within the remaining  
27 discovery period, and that motion practice was therefore unnecessary at that time.

28 17. The government produced four sets of email communications between

1 July 5 and July 23, 2024. It produced an additional set of email communications on  
2 August 12, 2024.

3 18. On July 31, 2024, in-person depositions were held in Santa Monica,  
4 California. Robert Frommer and I were present for Plaintiff. Assistant United  
5 States Attorneys Jasmin Yang and Yujin Chun attended for the government, along  
6 with Ted Schwartz, an attorney with the FBI's Office of General Counsel who is  
7 based in Los Angeles. After the deposition, I again asked counsel for the  
8 government about the status of the FBI's document productions, given the  
9 approaching discovery cut-off date. Ms. Chun stated that the government expected  
10 to have an estimated completion date from the FBI by Friday, August 2, 2024. Mr.  
11 Schwartz did not say anything to contradict that understanding.

12 19. Attached as Exhibit J is a copy of an August 2024 email chain  
13 between the parties regarding the timing of the FBI's productions.

14 20. I was also one of the attorneys representing the named plaintiffs and  
15 the certified class in *Snitko v. United States*, No. 2:21-cv-04405 (C.D. Cal.). I am  
16 familiar with the discovery the FBI provided in that case. In addition to failing to  
17 produce videos showing the search for about 90 safe-deposit boxes and written  
18 records for about 56 boxes (Joint Stipulation ¶ 13, *Snitko*, Dkt. 109 at 5), the FBI  
19 produced virtually no email communications, even though the plaintiffs had  
20 requested them and the government had agreed to produce them.

21  
22 I declare under the penalty of perjury under the laws of the United States that  
23 the foregoing is true and correct.

24  
25 Executed this 15th day of August, 2024.

26  
27 /s/ Joseph Gay  
28 Joseph Gay